

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

RICHARD LAWRENCE STEWART,

No. C 12-1474 RS

Petitioner,

**ORDER TO SHOW CAUSE**

v.

RALPH M. DIAZ,

Respondent.

I. INTRODUCTION

This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a represented state prisoner. The petition is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. Petitioner has paid the filing fee.

II. DISCUSSION

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears

1 from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.  
 2 Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory,  
 3 palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th  
 4 Cir. 1990).

5 As grounds for federal habeas relief, petitioner claims: (1) the trial court violated his Eighth  
 6 Amendment rights by refusing to dismiss two twenty-year-old strike convictions which occurred  
 7 when petitioner was a juvenile; and (2) he received ineffective assistance of counsel. Liberally  
 8 construed, the claims appear to be cognizable on federal habeas review.

### 9 III. CONCLUSION

10 1. The Clerk shall serve by certified mail a copy of this order, the petition and all  
 11 attachments thereto, on respondent and respondent’s counsel, the Attorney General for the State of  
 12 California. The Clerk shall also serve a copy of this order on petitioner.

13 2. Respondent shall file with the Court and serve on petitioner, within **ninety (90)** days of  
 14 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing  
 15 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on  
 16 petitioner’s cognizable claims. Respondent shall file with the answer and serve on petitioner a copy  
 17 of all portions of the state trial record that previously have been transcribed and that are relevant to a  
 18 determination of the issues presented by the petition.

19 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the  
 20 Court and serving it on respondent’s counsel within **thirty (30)** days of the date the answer is filed.

21 4. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this order is  
 22 filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee Notes to  
 23 Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner  
 24 shall file with the Court and serve on respondent an opposition or statement of non-opposition  
 25 within **thirty (30)** days of the date the motion is filed, and respondent shall file with the Court and  
 26 serve on petitioner a reply within **fifteen (15)** days of the date any opposition is filed.

1           5. Petitioner is reminded that all communications with the Court must be served on  
2 respondent by mailing a true copy of the document to respondent's counsel.

3           6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the Court and  
4 respondent informed of any change of address and must comply with the Court's orders in a timely  
5 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
6 to Federal Rule of Civil Procedure 41(b).

7           7. Upon a showing of good cause, requests for a reasonable extension of time will be  
8 granted provided they are filed on or before the deadline they seek to extend.

9  
10           IT IS SO ORDERED.

11  
12           Dated: 6/11/12



RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE